CRIMINAL APPEAL No.382 OF 1988(DB)

(Against the judgment and order dated 21.7.1988, passed by the IInd Additional Sessions Judge, Hajipur in Sessions Trail No. 24 of 82/21 of 86.)

(1) Ram Sakal Pandit and
(2) Kapildeo Pandit ----(Appellants)

Versus

The State of Bihar --- (Respondents)

For the appellants:- Mr Sunder Singh Shyam
For the State of Bihar:- Mr L.Kailash Bihari Prasad
For the informant:- Mr Ram Suhawan Singh.

P r e s e n t

THE HON'BLE MR. JUSTICE SUDHIR KIMAR KATRIAR
THE HON'BLE MR. JUSTICE SAMARENDRA PRATAP SINGH

S.K.Katriar &
S.P.Singh,JJ

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The instant appeal is directed against the judgment and order dated 21.7.1988, passed by the learned IInd Additional Sessions Judge, Hajipur, in Sessions Trial No. 24 of 82//21of 86, whereby the learned judge convicted appellant no.1 (Ram Sakal Pandit @ Sakaldeo Pandit), under section 307 IPC, and sentenced him to undergo rigorous imprisonment (RI) for ten years and to pay a fine of Rs.3,000/- (three thousand), or in default to undergo RI for a further period of one year. He further convicted appellant no.2 (Kapildeo Pandit) only under section 323 IPC and directed him to pay a fine of Rs.1000/- (one thousand), or in default to undergo RI for six months. The learned trial court did not pass any sentence of imprisonment against him under this section.

2. The prosecution case, in short, as made out in the fard beyan of one Ram Narain Pandit S/o Ram Anup Pandit, resident of village Permandpur PS, and District Vaishali, recorded on 2.3.1980, at 10.45, pm

in the State dispensary, Vaishali, by the Officer in charge, namely, B.L.Singh (PW 12), in short is as follows:-

3. On 2.3.1980 at about 6 pm, the informant, namely, Ram Narain Pandit, learnt that appellant no. 1 (Sakaldeo Pandit @ Ram Sakal Pandit), appellant no.2 (Kapildeo Pandit), Bhajan Pandit, Sachindra Pandit, and Kamal Deo Pandit, were assaulting his cousin. When he intervened to protect his brother, he too was assaulted by lathi. When informant fell down, the accused assaulted him with sharp- cutting weapon. On account of assault, the toe and adjoining finger of left leg of his cousin, Prem Nandan Pandit alias Bhola Pandit, were severed. He claimed that altercation between his cousin and Kapildeo Pandit arose due to dispute arising from easing by female members of prosecution side in the field of accused persons. The informant stated that his father also received injuries. He stated that occurrence was witnesses by Dhodha Pandit (PW 7), Chaturi Sah (PW 2) and others. He stated that his father Ram Anup Pandit and cousin Prem Nandan Pandit @ Bhola Pandit are undergoing treatment in hospital.

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4. Pursuant to the aforesaid fard beyan (ext 4), a formal FIR (ext 5), being Vaishali P. S. case no. 2 of 1980, dated 3.3.1980, was drawn under sections 147, 148, 149, 324,326 of the IPC. Police, after investigation submitted charge sheet under sections 147, 148, 149, 324 and 326 IPC . The magistrate took cognizance of offence under section 307 and 148 of the Code, and committed the case to the court of sessions for trial. Charges under sections 148 and 307 IPC were framed against appellant no.1, and under sections 148 and 323 of the Code against appellant no.2

(Kapildeo Pandit),whereas rest of the accused persons mentioned in the FIR stood charged under section 147 IPC for committing offence of rioting.

5. The two appellants and the accused persons pleaded not guilty and claimed to be tried in respect of their respective charges.

6. The prosecution examined ten witnesses in support of its case, whereas the defence examined three witnesses. Out of the afoaresaid ten prosecution witnesses, PW 7 (Ram Anup Pandit), PW 9 (Prem Nandan Pandit @ Bhola Pandit), and PW 10 (Ram Narain Pandit), sustained injuries.

7. PW 1 (Niranjan Singh) stated that three accused persons assaulted the prosecution side and dragged Ram Anup Pandit towards their house. Chaturi Sah (PW 2) stated that his house is situated very close to the house of the prosecution side. His evidence is on the point of seizure of blood stained soil (Mitti). He stated that police found seized blood from four places from in front of the house of the informant (Ram Narain Pandit) and from three places from the Sahan of accused side.

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8. PW 3 (Ram Kailash Pandit) is not an eye witness of the occurrence. He stated that at 7 pm on the relevant date he saw Ram Narain Pandit and Prem Nandan Pandit lying injured on the ground. He found both of them had sustained injuries on their persons. He also corroborated the allegation of dragging of Ram Anup Pandit by the accused persons towards their house. He stated that the appellant nos.1 and 2 were both armed with Farsa. In his cross examination, he however admitted that Ram Anup Pandit, father of the informant, namely, Ram Narain Pandit, is his uncle.

9. PW 4 (Yogendra Sah) is also a neighbour of the informant though he is not eye witness of the occurrence. He corroborated the factum of injuries on the person of Bhola Paswan @ Prem Nandan Pandit, and Anup Pandit, who were all lying injured.

10. PW 5 (Sushila Devi) is a daughter of the family of the prosecution side. In her examination-in-chief she admitted that she had gone to the field of appellant no.1 (Sakaldeo Pandit) for easing, along with Janki Devi. In the meantime, wife of appellant no.2 (Kapildeo Pandit) abused her and thereafter she came back to her house. She stated that appellant no.1 armed with Farsa, appellant no.2 armed with Bhalla , accused Bhajan Pandit armed with Lathi and one Ram Lal Pandit came to the house of the prosecution and assaulted Prem Nandan Pandit @ Bhola Pandit and Ram Narain Pandit. On account of assault, toe and adjoining finger of Prem Nandan Pandit stood severed. She alleged that appellant no.2 (kapildeo Pandit) also assaulted Prem Nairan Pandit @ Bhola Pandit with Lathi portion of the Bhalla. She stated that appellant no.1 (Sakal Deo Pandit) hurled 2-3 Farsa blow on the head and hand of Ram Narain Pandit. One Anup Pandit rushed to protect them, but he was too caught and dragged by the aforesaid appellant towards their Sahan. In her cross examination, she stated that it was a dark night, and accused persons including the appellants, had come to her house within ten minutes of her coming back from the field of accused persons. She categorically denied that accused persons sustained any injury. The evidence of this witness seems consistent with that of the prosecution case and the defence has not been able to elicit any contradiction worth the name.

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11. PW 6 (Sukhdeo Pandit) is cousin of Ram Anup Pandit, father of the informant. He has substantially corroborated the prosecution case as narrated by PW 5. He stated that the occurrence continued for 7-8 minutes. He stated that only one Farsa blow was hurled on Prem Nandan Pandit @ Bhola Pandit, whereas Ram Narain Pandit sustained 4-5 such blows. He denied the suggestion of defence, that he stated before the police that when he came to the place of occurrence, he saw Prem Nandan Pandit @ Bhola Pandit and Ram Narain Pandit lying unconscious on the ground.

12. PW 7 is a tendered witness. PW 8 (Ram Anup Pandit) is the farther of the informant, who too corroborated the prosecution case as narrated by his son (PW 10). He stated that appellant no.1 assaulted Prem Nandan Pandit on his left foot with farsa severing his toe and the adjoining finger. He stated that appellant no.1 also assaulted Ram Narain Pandit with Farsa on his palm and left hand as well as on the head. He stated that appellant no.2 assaulted Prem Nandan Pandit and Ram Narain Pandit with lathi. In his cross examination, however, at one place he stated that the occurrence continued for 30-40 minutes. He admitted the filing of the counter case.

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13. PW 9 (Prem Nandan Pandit @ Bhola Pandit) , cousin of the informant, stated that on the fateful Sunday at about 7 pm, the four accused persons including the two appellants, who were armed with Farsa and Bhalla, came and started abusing him. When he made a protest, appellant no.1 assaulted with his farsa at the head which finally injured and cut his toes and adjoining finger. Appellant no.1 assaulted his son Ram Narain Pandit with farsa six times and, appellant no.2 assaulted him with lathi.

14. PW 10 (Ram Narain Pandit) is the informant of this case. He stated that on fateful Sunday at about 7 pm, on hearing hulla he went towards his Sahan. He saw Ram Lal Pandit and appellant no. 2 assaulting his cousin Prem Nandan Pandit with lathi. Appellant no.1 (Sakal Deo Pandit) hurled farsa blow at Prem Nandan Pandit at his head, which finally cut his toe and adjoining finger. He stated that appellant no.2 also assaulted on his back with lathhi portion of bhalla. He stated that appellant no.1 struck him six times on account of which he sustained various injuries on his head, elbow and shoulders. Blood also oozed from the wound. PW 10 was thereafter taken to the Government Hospital, Vaishali, where police came and recorded his fard beyan at about 11 pm in the night. He admitted that a quarrel had taken place between the female members of two sides, namely, the prosecution and accused sides. He stated that when he reached the place of occurrence, Prem Nandan Pandit was not lying injured on the ground. He stated that PWs. 2 and 7 were not present at the place of occurrenc at the relevant time. However, some witnesses stated that when they reached the place of occurrence, they saw Prem Nandan Pandit lying injured on the ground. We find that PW 10 has supported the prosecution case. We also find that substantially the evidence of witnesses have remained consistent on material points.

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15. PW 11 (Dr H.N. Gupta) who examined Ram Anup Pandit (PW 8), Prem Nandan Pandit (PW9), and Ram Narain Pandit (PW 10), found that each of them have sustained grievous injuries, the details of the same would be discussed at the time of consideration of rival submissions of the parties. The injury reports were marked as ext 9 and 9A.

16. PW 12 (Babu Lal Singh) is the IO of the case. He has recorded the fard beyan of PW 10 (Ram Narain Pandit) in the Govt. Hospital. Vaishali. He issued OD slip from the hospital, which is marked as exhibit 3. He stated that he recorded the fard beyan of the informant at 10.45 pm in the hospital, which has been marked as exhibit 4. On the basis of fard beyan, he drew the formal FIR which has been marked as exhibit 5. He found injuries on the person of Ram Anup Pandit and Prem Nandan Pandit, who were not in a position to make any statement at that point of time. He found that the place of occurrence is a Sahan land situated in front of the house of the informant. He found blood at four places in the aforesaid Sahan. He also found that the house of the accused persons is quite close to the house of the prosecution side, being intervened by the house of one Jagarnath Pandit and Jogendra Sah. He seized blood stained Mitti from Sahan of Ram Narain Pandit which is marked as exhibit 7 He stated that a counter case has also been filed by the accused side.

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17. The defence examined three witnesses in support of its case. Curiously enough DW 1 (Dr H. N. Gupta), who was examined as PW 11, has also been examined by defence as DW 1. He stated that he examined Ram Lal pandit and Ram Sakal Pandit (appellant no.1), and found the injuries to be simple in nature. He stated that injuries are trivial in nature and can be manufactured. He admitted that he had examined them in his private clinic and not in the Govt Hospital. He stated that he did not refer the injured to the police, nor he referred them to the Hospital.

18. DW3 is a lawyer. He stated that he drafted the complaint petition filed by the accused side. He admitted that police had submitted

final report and the case is proceeding on protest petition.

19. The statement and explanation of accused were recorded in terms of section 313 of the Code of Criminal Procedure. The accused persons pleaded innocence and denied the allegations of having assaulted the prosecution side.

20. After consideration of materials on record, the learned trial court found that the prosecution has been able to prove the guilt of appellant no.1 under section 307 IPC, and that of appellant no.2 under section 323 IPC, beyond all reasonable doubt. The trial court, however, did not find the guilt against rest of the accused persons substantiated and they were acquitted of their respective charges. The learned trial court found that the prosecution has fully established its case in respect of manner of occurrence, place of occurrence, and the time of occurrence. He found that the injuries sustained by the accused persons are of trivial nature and can also be manufactured.

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21. Mr Shyam Sundar Singh Shyam, learned counsel appearing for the appellants, submitted that the judgment of the trial court holding the appellant guilty of charge under sections 307 and 323 of the Code is erroneous both on law as well as on facts. He submits that counter case filed by the defence is the real version of the true occurrence, that took place on the relevant day. He submits that the prosecution has failed to explain the injuries on the accused persons and has not come to the court with clean hands. He further submits that no offence under section 307 of the Code is made out against appellant no.1. In support of his contention, he submits that none of the prosecution witnesses stated that the accused persons had

assaulted the prosecution side with intent to kill them. He submits that even assuming the prosecution case to be true, the alleged assault at the most would bring the offence under sections 324 and 326 of the Code.

22. It is further submitted by the appellants that it is the prosecution side who is the aggressor. He submits that the female members of the prosecution side soiled their field and thus they had authored the provocation. He submits that female members of their side rightly protested to such conduct of the prosecution side. He states that the prosecution side became infuriated and they came to the house of the accused in a menacing mood to which they protested and assault took place between them. He submits that defence case is more probable, as in circumstances of the case, the prosecution would be the aggrieved side. He lastly submits that the occurrence took place 28 years back, and both sides are close agnates, and living in close neighborhood. He submits that in case this court finds appellant no.1guilty of charge under section 307 of the Code, the period undergone by him in custody during pendency of the matter may be taken to be adequate punishment, coupled with imposition of fine. In support of his contention, learned counsel for the petitioners relied upon decisions of the Apex Court in cases of Ram Narain and others versus State of Utter Pradesh, reported in 1972 Sc 2544, Lakshmi Singh and others versus State of Bihar, reported in 1976 SC 2263, Jagta Vs State of Haryana, reported in 1974 SC 1545 and State of Gujrat Vs Bai Fatima and another, reported in 1975 Sc 1478.

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23. Mr Ram Suhawan Singh, learned counsel appearing for the informant submits that each of the three witnesses, namely, PWs 8,9 &10

sustained grievous injuries. He stated that all the three injured (Pws 8, 9 and 10) have fully supported the prosecution case ,and the defence case is false.

24. Mr Lala Kailash Behari Prasad, learned Public prosecutor appearing for the State of Bihar, submitted that no fault can be found with the impugned judgment and order of the trial court which has found appellant no.1 guilty of charge under section 307 IPC, and appellant no.2 guilty under section 323 IPC . He submits that the task of the prosecution side has become easier as the defence side has not challenged the time of occurrence, place of occurrence, and presence of the prosecution witnesses, namely, PWs. 8,9 and 10, at the place of occurrence. He submits that Pws 1,3,6,8,9 and 10 have supported the manner of occurrence, as alleged by the prosecution. He stated that the injuries sustained by the accused persons are all simple in nature. He submits that the doctor in his statement has said that the alleged injuries of the accused could be manufactured. He submits that time elapsed since the ascertaining of the injuries caused by the accused persons as mentioned in their injury reports, does not fit in with the time of occurrence as stated in their counter case. He submits that it is not incumbent upon prosecution side to explain simple injuries sustained by defence. In this respect, learned counsel relied upon the case of Surendra Paswan Vs. the State of Jharkhand, reported in 2004(1) PLJR 60 SC. He submits that the accused persons were not examined in the Government Hospital. He submits that though the doctor was government doctor, he examined the accused in his private clinic. He submits that the doctor admitted in his evidence that he did not refer the injured either to the police

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or to the Govt. Hospital.

25. After taking note of rival submissions of the parties, we now proceed to examine whether the prosecution side has been able to prove the case beyond all reasonable doubts. It is to be seen, whether the prosecution has succeeded in proving the occurrence enumerated in the manner alleged in the fard beyan, and whether place and time of occurrence as alleged by defence is true. As per prosecution case, the accused persons were annoyed, as female member of their house had soiled the field of accused side. The accused side was aggrieved and as such appellants armed with farsa and bhala, along with together accused persons, came to Sahan of informant. We find that PWs 5,6,8,9 and 10 all stated that appellant no.1 armed with farsa accompanied with appellant no.2 armed with bhalla, and other two accused persons armed with lathi, assaulted Prem Nandan Pandit (PW 9) with farsa injuring his left toe and adjoining finger. On hearing halla, when informant (PW 10), and his father (PW 8), tried to intervene, they too were assaulted by the accused persons. The witnesses stated that appellant no.1 (Ram Sakal Pandit) assaulted Prem Nandan Pandit with Farsa. Prem Nandal Pandit (PW 9) too stated that appellant no.1 hurled farsa on his head, but as he dipped to save himself, the same struck his left toe and an adjoining finger. PW 10 (Ram Narain Pandit) stated that appellant no.1 struck farsa blow on him, causing injury on his head, thumb, elbow and portion of left shoulder. He stated that appellant no.2 assaulted Prem Nandan Pandit with lathi. All the aforesaid witnesses, namely, P.Ws. 1, 3,6,8,9 and 10, were categorical in their statements, that accused persons dragged Ram Anup Pandit, father of the informant who

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had come to intervene, to the doors of their house, and assaulted him. PW 8 (Ram Anup Pandit) stated that appellant no.1 assaulted him with farsa on head, thigh and back-bone, and appellant no.2 (Kapildeo Pandit) assaulted him with lathi. We thus find that these witnesses have consistently supported the manner of occurrence and the defence has not been able to cause any dent in their evidence.

26. So far as place of occurrence is concerned, witnesses, namely, PWs 1,5,8,9,10, stated that Prem Nandan Pandit and Ram Narain Pandit were assaulted in front of the house of the informant and Ram Anup Pandit was assault, after being dragged at the doors of the accused side. The witnesses stated that blood was found at both the place of occurrence, as mentioned aforesaid. The IO too found blood at four places in front of the house of informant. The consistent depositions of witnesses in respect of the place of occurrence and objective finding of blood in front of house of informant by IO fully establishes the place of occurrence.

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27. We now take up the next point, whether charge under section 307 of the Code is made out against appellant no.1, and similarly whether a case under section 323 IPC is made out against appellant no.2. Learned counsel for the appellants submits that even assuming the prosecution case to be true, the offence would come only within the ambit of sections 326 or section 324 IPC . In support of his submission, he stated that no witness had deposed that the accused assaulted the prosecution side with the intention to kill. Before we deal with this issue, it would be appropriate to analyze the ingredients of section 307 IPC. A person is said to commit an offence under section 307 IPC if he assaults the person with

an intention to cause death, or with knowledge that such assault would cause death, or the injury inflicted in ordinary course will cause death or the act committed is so imminently dangerous as would cause the death. In view of aforesaid provision of section 307 IPC, we now proceed to examine whether appellant no.1 hurled farsa blow either with an intention to kill the deceased, or with such knowledge that such below would kill the deceased. PW 8 (Ram Anup Pandit) has stated that appellant no.1 struck him on his head with farsa thrice, causing grievous injuries. Similarly, PW 10 (Ram Narain Pandit) stated that appellant no.1 struck him with farsa causing grievous injury on his head. PW 9 (Prem Nandan Pandit) stated that appellant no.1 hurled farsa blow on his head, which struck the left leg, severing his toe and adjoining finger. PW 11 (Dr H N Gupta) also found, that injuries sustained by PW 8 and PW 10 were on vital parts of body, and were grievous in nature. It would also appear that toe and adjoining finger of Prem Nandan Pandit was also permanently severed causing permanent disfiguration. It would be useful to reproduce the injuries sustained by PWs 8 and 10 (Ram Anup Pandit and Ram Narain Pandit) respectively.

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Ram Anup Pandit sustained three injuries on his head which are as follows:-

(i)Incised wound 1" x ¼" x deep to scalp on left side of the fore head laterally and

(ii) Incised would 1" x ¼ " x deep to scalp on the left side of the fore head laterally and

(iii) Incised wound ½ " x ¼ " x deep to scalp on the occipital region.

Ram Narain Pandit sustained six incised injuries which are enumerated herein below:-

(i) Incised wound 2 inch x ¼ inch x deep to bone on the lateral side of the left elbow.

(ii) Incised wound 41/2 inch x ¼ inch x deep to bone on the left scapula 3 inch posterior to tip of shoulder joint extending from the mid of the scapula to mid of the deltoid.

(iii) Incised would 1 lich x ¼ inch x deep to bone on the left eye brow at the lateral angle.

(iv) Incised would 1 inch x ¼ inch x deep to muscle 2 ½ inch below the left elbow joint on the medial surface.

(v) Incised wound 6 inch x ¼ x cutting the base of 1st meta carpal (thumb) encircling the whole of the left thumb.

(vi) Incised wound 1 inch x ¼ inch x deep to scalp x mid of the verte.

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In view of the aforesaid evidences of PWs 8,9 and 10 and objective findings of the doctor, it cannot be said that appellant no.1 who hurled repeated farsa blow on the head of the injured dreaded without intention or knowledge that it would caused death of the injured. As such, we hold that appellant no.1 is guilty of charge under section 307 IPC .

28. So far as appellant no.2 is concerned, witnesses have stated that he assaulted two of the injured with lathi portion of bhala, as such, we hold that the trial court has rightly found him guilty of offence under section 323 IPC .

29. Now we take up the next issue, as to which of the two sides was perpetrator of the occurrence. It appears from the evidence of prosecution witness that the female member of prosecution side had soiled the field of accused side; female member of accused side abused the female members of the prosecution side, and thereafter the alleged occurrence took place. Even assuming provocation was caused by the prosecution side, the reaction was not commensurate with the provocation caused by prosecution side.

30. We now take up the other issue, whether the case of defence is probable version of the occurrence or not. It appears that as per defence case, the prosecution side came to the house of the defence side and assaulted appellant no.1. Even as per the defence case, the injuries sustained by appellant no.1 were simple in nature. Furthermore, thought the doctor who examined appellant no.1 was a Govt. doctor, he examined him in his private clinic and he did not refer him either to police or to the Govt. Hospital, as required under the Police Manual. The doctor has further stated that the injuries sustained by appellant no.1 can be manufactured. Moreover, the injury reports of accused side do not support their case that they received the injuries in course of altercation and fight in the evening of 2.3.1980. Thus, we find that the case of defence is not a true version of the occurrence.

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31. Once we have found that appellant no.1 is guilty of section 307 IPC, and appellant no.2 is guilty of section 323 IPC, the next issue would be the quantum of sentence to be passed against them. We find that trial court has accorded 10 years imprisonment punishment to appellant

no.1, along with fine of Rs.3000/-.The appellant no.2 was found guilty under section 323 IPC, and only a fine of Rs1,000/- was awarded against him. It appears that the occurrence took place 28 years back, between the agnates, and thus the period of sentence of 10 years accorded to appellant no.1 by the learned trial court is reduced to the sentence of rigorous imprisonment for seven years with fine of Rs 6,000/- (six thousand), which would be equally distributed amongst the three injured, and in default to undergo RI for three months. We do not find any reason to interfere with punishment of fine to appellant no.2.

32. In the result, conviction of appellant no.1, namely, Ram Sakal Pandit for offences under section 307 IPC, and that of appellant no.2, namely, Kapildeo Pandit under section 323 IPC, is affirmed. The appeal stands dismissed with aforesaid modification in sentence and fine of appellant no.1. The bail bond of appellant no.1 is cancelled and he should surrender in the court below for serving the remaining sentence.

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(Samarendra Pratap Singh,J)

(Sudhir Kumar Katriar,J)

Patna High court
July 17, 2008
Shashi/NAFR